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Before the  
Federal Communications Commission  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of

Review of the Commission's  
Regulations Governing  
Television Broadcasting

MM Docket No. 91-221

To: The Commission

**COMMENTS OF SULLIVAN BROADCASTING COMPANY, INC.**

Sullivan Broadcasting Company, Inc. ("Sullivan"), by its attorneys, hereby submits its comments in response to the Commission's *Second Further Notice of Proposed Rule Making* (released November 7, 1996) ("*Second Further Notice*") in the above-captioned proceeding:

1. Sullivan, through its subsidiaries, owns ten television broadcast stations: WUTV (ch. 29), Buffalo, NY; WUHF (ch. 31), Rochester, NY; WFXV (ch. 33), Utica, NY; WXLV (ch. 45), Winston-Salem, NC; WRGT-TV (ch. 45), Dayton, OH; WTAT-TV (ch. 24), Charleston, SC; WZTV (ch. 17), Nashville, TN; WRLH-TV (ch. 35), Richmond, VA; WVAH-TV (ch. 11), Charleston, West Virginia; and WMSN-TV (ch. 47), Madison, WI. Through local marketing agreements ("LMAs"), Sullivan also currently provides programming for broadcast on television stations WUXP (ch. 30), Nashville, TN and WUPN (ch. 48), Greensboro, North Carolina.<sup>1</sup>

<sup>1</sup> WUPN and WUXP are licensed to Mission Broadcasting I, Inc. and Mission Broadcasting, II, Inc. respectfully.

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2. In recent years there has been a tremendous growth in competition in the video programming market. Sullivan understands current local television market conditions and the impact upon competition of common-ownership and common-operation of television stations in the same market. Television LMAs actually increase content diversity, enhance community service programming and improve the viability of ailing stations. Sullivan has witnessed these effects especially in mid-size to smaller markets.

3. Sullivan urges the Commission to allow common ownership of UHF/UHF station combinations in the same market as an unconditional exception to the current duopoly rule.<sup>2</sup> Relaxation of the duopoly rule in this manner is consistent with Congress's intent in passing the Telecommunications Act of 1996 (the "Act")<sup>3</sup> and with Congress's directive that the Commission re-examine its current multiple ownership restrictions. In the conference report to the Act, the House and Senate conferees noted that it would restrict the Commission in its relaxation of the rule only if the FCC proposed to allow VHF/VHF combinations, which the conferees reported they would allow only in compelling circumstances. Therefore, common ownership of UHF/UHF or VHF/UHF station combinations in the same market is well within the parameters set by Congress. In addition, allowing common ownership of two UHF stations or a VHF/UHF combination in the same market would have pro-competitive and positive public interest benefits. As the Commission is aware, UHF stations are disadvantaged, as compared to VHF stations,

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<sup>2</sup> Sullivan is a party to the comments filed in this docket by the Local Station Operators Coalition ("LSOC"), a group of local television broadcast station licensees. Sullivan supports the LSOC proposal and files these comments to emphasize certain aspects of Sullivan's position in this proceeding.

<sup>3</sup> See Section 202(c)(1) of the Act.

because of their inferior transmission capabilities and reduced coverage areas. As a result, UHF stations serve fewer households and, therefore, have reduced revenues. A UHF/UHF or a VHF/UHF combination in the same market would not threaten competition or content diversity.

4. Moreover, common ownership of two UHF stations or a VHF/UHF combination in the same market will not have anti-competitive effects because broadcast television licensees today are facing increasing competition from other video program providers such as cable television, DBS, MMDS, and other non-video entertainment and information providers such as broadcast radio licensees, newspapers, the Internet and direct mail advertisers.<sup>4</sup>

5. Relevant market data based upon common operation of stations under LMAs confirms that the efficiencies of combined operation result in service improvements. For example, WUPN, Greensboro, North Carolina, for which Sullivan currently provides programming, under its prior owner merely rebroadcast the signal of Sullivan's Winston-Salem station. Under its current LMA with Sullivan, WUPN now broadcasts entirely separate programming from Sullivan including programming provided by the United Paramount Network, other syndicated programming and coverage of the Charlotte Hornets NBA team. As a result of its LMA with Sullivan, the licensee of WUPN enjoys a steady income stream which has increased its stability as a broadcast station licensee.<sup>5</sup>

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<sup>4</sup> If the Commission adopts a waiver policy instead of an unconditional exception to the duopoly rule for UHF/UHF and VHF/VHF combinations and includes a "minimum voice" test among the factors considered when reviewing waiver requests, Sullivan urges the Commission to look to audio, print, computer electronic and all other non-broadcast "voices" available in a market.

<sup>5</sup> Prior to Sullivan's LMA relationship with WUPN, the station was in Chapter 11 bankruptcy proceedings and had been for years.

Sullivan's presence in the Winston-Salem/Greensboro market has allowed it to identify the previously under-served entertainment and informational needs of the Winston-Salem/Greensboro communities and efficiently develop programming that WUPN now uses to serve those needs and interests.

6. Permitting common ownership and operation of two UHF stations or a VHF/UHF combination as an unconditional exception to the duopoly rule poses no harm to competition and serves the public interest. Sullivan believes the record in this proceeding, including Sullivan's own experience in programming WUPN, as well as the record of Congress in enacting the Act, establishes the benefits of common-ownership of UHF/UHF and VHF/UHF station combinations. Therefore, licensees proposing common-ownership and common-operation of two UHF stations or a VHF/UHF combination should not be burdened with a case-by-case waiver process. Moreover, allowing UHF/UHF or VHF/UHF combinations as unconditional exception to the duopoly rule will create administrative predictability as well as ease the Commission's processing responsibilities.

7. Sullivan also urges the Commission to grandfather all existing Local Marketing Agreements ("LMAs"), irrespective of the ultimate outcome of this proceeding on the issue of local television ownership limitations and the outcome of other Commission rulemakings on related issues such as attribution. The Commission also should allow licensees to enter into LMAs in the future so long as they do not violate any of the Commission's rules in effect on the date any new LMAs are entered rules (*i.e.*, cross-ownership, local or national multiple ownership or one-to-a-market).

8. Congress set forth in Section 202(g) of the Act that nothing in the Act shall prohibit the “origination, continuation, or renewal of any television local marketing agreement that is in compliance with the regulations of the Commission.” In their comments on Section 202(g), the conferees noted the “positive contributions” of television LMAs and assured that nothing in Section 202(g) would “deprive the public of the benefits of existing LMAs that were otherwise in compliance with the FCC’s regulations on the date of enactment” of the Act (emphasis added). However, in the *Second Further Notice*, the Commission indicated it is inclined to allow LMAs entered into before November 5, 1996 (the adoption date of the *Second Further Notice*) to continue only for their “original term” (e.g., no renewal terms) and to allow the transfer of a licensee’s interest under such grandfathered LMAs only for the original term of the LMA. *Second Further Notice* at ¶¶ 88, 91. The tenor of this proposal suggests the Commission is considering going against Congress’s intent in grandfathering LMAs, which is clearly set forth in the Act and the Conference Report. Parties to existing, lawful LMAs must be able to maintain their rights under such LMAs, including continuation under renewal terms and the ability to assign and transfer the totality of their rights thereunder. Congress’s intent with regard to LMAs was grandfathering LMAs, not sun-setting them.

9. The Commission explained its proposal to allow LMAs in existence on November 5, 1996 to continue only for their original contract term and to prohibit assignment and transfer of LMA rights beyond the LMA original term as a “fair and efficient method” for bringing licensees into compliance with any new FCC rules. *Second*

*Further Notice* at ¶ 87. However, this objective violates Congress's intent to allow all existing LMAs in compliance with Commission regulations on the day the Act was signed into law to continue for their full and complete terms and to prohibit the Commission from retroactively altering the rights of parties to such LMAs by modifying related Commission rules or by adopting a rule that specifically would disallow LMAs. To cut short the rights of parties to existing LMAs or to prohibit parties to LMAs from assigning their LMA rights would be harshly unfair and in contravention of Congress's directive to the Commission.

10. Moreover, Sullivan urges the Commission to refrain from adopting any rule that would specifically disallow future LMAs. The record is replete with examples of and data explaining the efficiencies that result from LMAs and the improved ability of licensees to compete in today's multichannel video environment. Congress also acknowledged the positive contributions of LMAs. Moreover, the record is absent of examples of any substantial harmful affects of LMAs. Sullivan submits, therefore, that there is no basis for the Commission to take any direct action to prohibit the parties from entering LMAs in the future.

11. In the event the Commission declines to modify the duopoly rule to allow common-ownership of two television stations in the same market, Sullivan urges the Commission to refrain from making LMAs attributable interests or, in the alternative, to create an exception to allow parties to enter into LMAs in the future.<sup>6</sup>

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<sup>6</sup> Sullivan suggests the Commission adopt these proposals in addition to allowing the full continuation of all grandfathered LMAs in the event the duopoly rule is not relaxed.

12. Sullivan is alarmed by the Commission's current proposal to permit grandfathered LMAs to continue only for their current terms and to make LMAs attributable (absent a relaxation of the duopoly rule or an exception for future LMAs and grandfathered LMAs for their full terms). Such proposals will have a grave effect on Sullivan's current programming relationships with stations WUPN, Greensboro, NC and WUPX, Nashville, TN, and, more importantly, would have a direct negative impact upon the quality of programming currently provided to the viewers in the Nashville, TN and Greensboro/High Point/Winston-Salem, NC markets.

13. Sullivan's understanding for the Greensboro, NC and Nashville, TN markets stems from its ownership and operation of its own stations in those markets. Through Sullivan's LMAs with the owners of WUPN and WUPX, the quality and quantity of programming provided to the stations' viewers has been enhanced. Moreover, content diversity has increased in the markets served by these stations. Absent a substantial showing to counter the fast accumulating mounds of data that demonstrate the positive affects of LMAs, the Commission lacks a basis for disturbing such private contractual agreements which complied in every respect with the FCC's rules at the time they were entered.

14. In conclusion, Sullivan urges the Commission to: (1) allow common-ownership of UHF/UHF and VHF/UHF station combinations in the same market as unconditional exceptions to the duopoly rule; (2) allow the continuation

of grandfathered LMAs for their full and complete terms consistent with Congressional intent; and (3) ensure the right of licensee's to enter into LMAs in the future.

Respectfully submitted,

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